



Docket No.:080398.P349

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application. No. : 09/812,417
Applicant : Tara Burnhouse
Filed : 3-19-2001
TC/A.U. : 2173
Examiner : Cao H. Nguyen

Docket No. : 080398.P349
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Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPEAL BRIEF

Dear Sir:

Applicant submits, the following Appeal Brief pursuant to 37 C.F.R. § 41.37 for consideration by the Board of Patent Appeals and Interferences. Applicant also submits herewith our check number 273 in the amount of \$500 to cover the cost of filing the opening brief as required by 37 C.F.R. § 41.20(1)(b). Please charge any additional fees or credit any overpayment to our deposit Account No.02-2666. A duplicate copy of the Fee Transmittal is enclosed for this purpose.

01/18/2006 BABRAHA1 00000057 09812417

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TABLE OF CONTENTS

I.	REAL PARTY IN INTEREST	3
II.	RELATED APPEALS AND INTERFERENCES	3
III.	STATUS OF CLAIMS	3
IV.	STATUS OF AMENDMENTS	3
V.	SUMMARY OF CLAIMED SUBJECT MATTER	3
VI.	GROUND OF REJECTION TO BE REVIEWED ON APPEAL.....	5
VII.	ARGUMENTS	5
	A. Claims 1, 9, 17, and 23 Are Not Anticipated by Lawler.....	5
	B. Claims 2-8, 10-16, 18-22, and 23-28 Are Not Anticipated by Lawler.	7
VIII.	CONCLUSION	9
IX.	CLAIM APPENDIX	10
XI.	EVIDENCE APPENDIX	15
XII.	RELATED PROCEEDINGS APPENDIX	15

I. REAL PARTY IN INTEREST

The real party in interest is the assignees, SONY Corporation and SONY Electronics Inc.

II. RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences known to the appellants, the appellants' legal representative, or assignee, which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

III. STATUS OF CLAIMS

Claims 1-28 of the present application are pending and remain rejected. The Applicants hereby appeals the rejection of claims 1-28.

IV. STATUS OF AMENDMENTS

On July 13, 2005, the Applicants filed a response to Office Action dated April 13, 2005. On September 29, 2005, the Examiner issued a Final Office Action. The Applicants filed a Notice of Appeal from the Final Office Action on November 29, 2005.

V. SUMMARY OF CLAIMED SUBJECT MATTER

1. Independent claims 1, 9, 17, and 23:

The present invention is a future program action indication display. In operation 510, a user selects a future program from a Program Guide and the selected program is indicated¹. In operation 515, the Future Program Action Pop-up appears². From this display the user selects an action to affect the future program in operation 520³. The electronic programming guide (EPG) displays an indicator to indicate which action the user has selected for a future program. This allows the user to be reminded of the action to be taken so that the user may rescind or modify the action⁴.

¹ See Specification, page 8, paragraph [0038]; Figure 5, element 510.

² See Specification, page 8, paragraph [0038]; Figure 5, element 515.

³ See Specification, page 8, paragraph [0038]; Figure 5, element 520.

⁴ See Specification, page 9, paragraph [0038].

In operation 525, the information for the action selected is displayed⁵. In operation 530, the user accepts or modifies the information. The user presses return when satisfied with the information⁶. In operation 535, the EPG display shows the selected future program that now has an indicator informing the user that the selected action will affect the selected future program. This indicator which will appear with the EPG will remind the user of what actions for future programs have been selected⁷.

A display screen 606 is the EPG listing various future programs and the pertinent information associated with them. Screen 611 depicts the selection of a particular future program, and screen 616 shows the Future Program Action Pop-up⁸.

A display screen 621 is the Future Program Action Pop-up with the action to be taken in regards to the selected future program highlighted 622⁹. Screen 626 depicts the details of the action to be taken, and allows the user to accept or modify the details as discussed. Screen 631 shows the user returning to the EPG¹⁰.

A display screen 636 shows the program guide. The future program selected by the user now has an indicator 637 that indicates the action that will be taken in regards to the future program¹¹.

2. Claims 2-8, 10-16, 18-22, and 24-28:

The indicator displayed by the EPG is an action-descriptive icon so that the user would be aware of the action to be taken in regard to the future program¹². Screen 631 shows the user returning to the EPG¹³. The selected program may be indicated by highlighting¹⁴.

In operation 515, the Future Program Action Pop-up appears¹⁵. The display may show the start and stop time of the recording as well as the date. The user may wish to modify this information so that recording begins some time before the program or so that

⁵ See Specification, page 9, paragraph [0039]; Figure 5, element 525.

⁶ See Specification, page 9, paragraph [0039]; Figure 5, element 530.

⁷ See Specification, page 9, paragraph [0039]; Figure 5, element 535.

⁸ See Specification, pages 9-10, paragraph [0041]; Figure 6a, elements 606, 611, and 616.

⁹ See Specification, page 10, paragraph [0042]; Figure 6b, elements 621 and 622.

¹⁰ See Specification, page 10, paragraph [0043]; Figure 6b, elements 626 and 631.

¹¹ See Specification, page 10, paragraph [0044]; Figure 6c, elements 636 and 637.

¹² See Specification, page 9, paragraph [0038].

¹³ See Specification, page 10, paragraph [0043]; Figure 6b, element 631.

¹⁴ See Specification, page 8, paragraph [0038].

¹⁵ See Specification, page 8, paragraph [0038]; Figure 5, element 515.

only a portion of the future program is recorded. The user may wish to ensure that the entire program is recorded and so set the recording time prior to the program start time of the EPG. The user may wish to record only the opening monologue of a talk-show and so set the recording time well before the program end time of the EPG¹⁶. The display shows a return feature, a help feature, and scheduled recording icon in the scheduled program slot¹⁷.

VI. GROUND S OF REJECTION TO BE REVIEWED ON APPEAL

1. Claims 1, 9, 17, and 23 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,822,123 issued to Lawler ("Lawler").
2. Claims 2-8, 10-16, 18-22, and 24-28 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,822,123 issued to Lawler ("Lawler").

VII. ARGUMENTS

A. Claims 1, 9, 17, and 23 Are Not Anticipated by Lawler.

Claims 1, 9, 17, and 23 are rejected under 35 U.S.C. § 102(b) as being anticipated by Lawler (US Patent No. 5,822,123). Applicants respectfully traverse the rejection and contend that a *prima facie* case of anticipation has not been established.

To anticipate a claim, the reference must teach every element of a claim. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." Vergegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ 2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the...claim." Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 USPQ 2d 1913, 1920 (Fed. Cir. 1989).

Lawler discloses a program time guide. A program grid 80 includes a focus frame 102 which identifies a selected program title (Lawler, col. 9, lines 57-59). A program summary panel 108 provides the user with more detailed information about a selected program (Lawler, col. 10, lines 20-22). A future program options menu 136 is displayed when an action key is pressed (Lawler, col. 14, lines 22-26). The future program options

¹⁶ See Specification, page 9, paragraph [0039].

¹⁷ See Specification, Figures 6b and 6c.

menu 136 includes an Order button 138, a Remind button 140, a Record button 130, and a Cancel button 132 (Lawler, col. 14, lines 30-33).

Lawler does not disclose, implicitly or explicitly, among other things, at least one of (1) providing future program information for a plurality of future programs, at least one future program being selected by a user; (2) providing, on a future program actions menu, a plurality of future program actions for the selected future program, at least one future program action being selected by the user, each future program action being an action selected to be performed on a future program; (3) allowing the user to accept or modify the action; (4) receiving the selected at least one future program and the selected at least one future program action from the user; and (5) displaying the future program information of the selected at least one future program with an indicator such that the indicator indicates the selected at least one future program action.

Lawler merely discloses the various option buttons of the program options. Activation any of these buttons causes the option to be performed (Lawler, col. 14, lines 35-48). The user is not given an opportunity of accept or modify the action. Furthermore, Lawler merely discloses a focus frame to identify a selected program title, not an indicator to indicate the selected future program action. A future program action is an action performed on a future program, not a future program itself.

The Final Office Action states that Lawler discloses the indicator, citing program summary panel 108 and column 10, lines 34-41 (Final Office Action, page 3, lines 1-3). Applicants respectfully disagree. The program summary panel 108 merely contains a summary of a program 102 (Lawler, Figure 8, elements 102 and 108), not an indicator indicating a future program action. This program summary panel 108 may contain user specific icons to indicate certain characteristics set by the user such as whether the user has set a reminder or has requested recording of the program (Lawler, col. 10, lines 28-41). However, Lawler does not disclose that these icons indicate the selected program action. These are merely the characteristics set by the user.

In the Final Office Action, the Examiner states that the limitation as claimed set forth to rely upon if the focus frame indicates a past program when the action key is pressed, a past program options menu is displayed (Final Office Action, page 4, paragraph number 2). However, this option menu only relates to past show options, not future program actions. Furthermore, the menu does not allow the user to accept or modify the

action. The options only include Order, Record, or Cancel (Lawler, col. 14, lines 49-52; Figure 9).

In response to the Applicants' argument that element 102 or 108 is not an indicator indicating a future program action, the Examiner merely recites the description of the operations of the focus frame 102, the program summary panel 108 and the interactive station controller 18 without addressing the significance of the indicator (Final Office Action, page 5). In fact, the cited portions clearly show that neither the focus frame 102 nor the program summary panel 108 is an indicator indicating a future program action. The focus frame 102 identifies a selected program title within the program grid (Lawler, col. 9, lines 57-59; Figure 3). The focus frame 102 identifies a selected program title by drawing a conspicuous border around the title (Lawler, col. 9, lines 59-61; Figure 3). In contrast, the indicator in the claimed invention is used to indicate a specified action. An action is not merely a selected program title. Similarly, the program summary panel 108 is not an indicator. It merely includes a preview window 110, the full title of the program 112, a description of the program 114, or other characteristics of the program (Lawler, col. 10, lines 26-33; Figure 3). None of these corresponds to an indicator to indicate an action.

The Examiner failed to establish a *prima facie* case of anticipation. Lawler does not disclose, implicitly or explicitly, any of the above elements. Accordingly, Applicants believe that claims are distinguishable from the cited prior art reference.

B. Claims 2-8, 10-16, 18-22, and 23-28 Are Not Anticipated by Lawler.

Claims 2-8, 10-16, 18-22, and 23-28 are rejected under 35 U.S.C. § 102(b) as being anticipated by Lawler (US Patent No. 5,822,123). Applicants respectfully traverse the rejection and contend that a *prima facie* case of anticipation has not been established.

Lawler does not disclose, implicitly or explicitly, among other things, (1) the indicator is an action-descriptive icon, (2) the future program actions menu comprises features selected from the group consisting of a return feature, allowing user to navigate back to preference menu, and a help feature, allowing user to navigate to several dependent help categories, the features being able to be selected by a user, (3) the selected at least one future program is indicated by highlighting, (4) the future program actions menu is displayed in a popup window on the monitor display screen, (5) the selected at least one future program action includes actions selected from the group consisting of recording the

selected at least one future program, notifying the user of the display schedule of the selected at least one future program, and preventing the display of the selected at least one future program, (6) the start and/or stop times of the selected at least one future program action does not match the start and/or stop times of the selected at least one future program, and (7) the future program actions menu includes a source option such the selected future program action will affect all future programs from a user-specified source.

In the Final Office Action, the Examiner states that Lawler discloses the indicator is an action-descriptive icon, citing col. 18, lines 53-67 (Final Office Action, page 3, first full paragraph). However, the cited portion is only a claim of an interactive system to provide program scheduling information with a video display. There is no mention of an indicator or an action-descriptive icon.

The Examiner further states that Lawler discloses a return feature, a help feature selected by the user (Final Office Action, page 3, second full paragraph). However, Lawler merely discloses that the CPU monitors to see if the navigation key is pressed and continues to monitor for user commands (Lawler, col. 15, lines 4-14). There is no return feature. Furthermore, Lawler merely discloses that the display date panel 104 is particular useful to help a user remain oriented when viewing program schedule information for a date other than the current date (Lawler, col. 15, lines 4-14). This is not a help feature selected by the user.

The Examiner further states that Lawler discloses the selected at least one future program is indicated by highlighting, citing focus frame 102, Figure 8, and column 14, lines 23-24. However, the focus frame 102 merely identifies a selected program title by drawing a border around the title (Lawler, col. 9, lines 59-61). There is no associated future program action.

Lawler merely discloses a program summary panel 108 having a preview window 110 (Lawler, col. 10, lines 28-41). None of these corresponds to a pop-up window for a future program actions menu. The icons shown in the program summary panel 108 are used to indicate whether the user has set a reminder or has requested recording (Lawler, col. 10, lines 36-39), not a future program action. The displayed current time and date are used to indicate the current availability to the user (Lawler, col. 13, lines 16-22), not to match the start and stop times. The past program options menu (Lawler, col. 14, lines 58-67) is not used to indicate the future program actions menu.

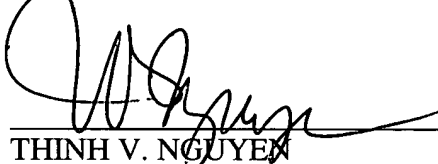
In summary, the Examiner failed to establish a prima facie case of anticipation. Lawler does not disclose, either implicitly or explicitly, any of the above elements. Accordingly, Applicants believe that independent claims 1, 9, 17, and 23 and their respective dependent claims are distinguishable from the cited prior art reference.

VIII. CONCLUSION

Applicants respectfully request that the Board enter a decision overturning the Examiner's rejection of all pending claims, and holding that the claims are neither anticipated nor rendered obvious by the cited prior art reference.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP



THINH V. NGUYEN
Reg. No. 42,034

Dated: January 11, 2006

12400 Wilshire Blvd., 7th Floor
Los Angeles, CA 90025-1026
(714) 557-3800

IX. CLAIM APPENDIX

The claims of the present application which are involved in this appeal are as follows:

1. (previously presented) A method for indicating future program action on a future program information display comprising:

providing future program information for a plurality of future programs, at least one future program being selected by a user;

providing, on a future program actions menu, a plurality of future program actions for the selected future program, at least one future program action being selected by the user, each future program action being an action selected to be performed on a future program;

allowing the user to accept or modify the action;

receiving the selected at least one future program and the selected at least one future program action from the user; and

displaying the future program information of the selected at least one future program with an indicator such that the indicator indicates the selected at least one future program action.

2. (Original) The method of claim 1, wherein the indicator is an action-descriptive icon.

3. (Original) The method of claim 1, wherein the future program actions menu comprises features selected from the group consisting of a return feature, allowing user to navigate back to preference menu, and a help feature, allowing user to navigate to several dependent help categories, the features being able to be selected by a user.

4. (Original) The method of claim 1, wherein the selected at least one future program is indicated by highlighting.

5. (Original) The method of claim 1, wherein the future program actions menu is displayed in a popup window on the monitor display screen.

6. (Original) The method of claim 1, wherein the selected at least one future program action includes actions selected from the group consisting of recording the selected at least one future program, notifying the user of the display schedule of the selected at least one future program, and preventing the display of the selected at least one future program.

7. (Original) The method of claim 6, wherein the start and/or stop times of the selected at least one future program action does not match the start and/or stop times of the selected at least one future program.

8. (Original) The method of claim 1, wherein the future program actions menu includes a source option such the selected future program action will affect all future programs from a user-specified source.

9. (previously presented) A machine-readable medium that provides instructions, which when executed by at least one processor, causes the at least one processor to perform a method comprising:

- providing future program information for a plurality of future programs, at least one future program being selected by a user;

- providing, on a future program actions menu, a plurality of future program actions for the selected future program, at least one future program action being selected by the user, each future program action being an action selected to be performed on a future program;

- allowing the user to accept or modify the action;

- receiving the selected at least one future program and the selected at least one future program action from the user; and

- displaying the future program information of the selected at least one future program with an indicator such that the indicator indicates the selected at least one future program action.

10. (Original) The machine-readable medium of claim 9, wherein the indicator is an action-descriptive icon.

11. (Original) The machine-readable medium of claim 9, wherein the future program actions menu comprises features selected from the group consisting of a return feature, allowing user to navigate back to preference menu, and a help feature, allowing user to navigate to several dependent help categories, the features being able to be selected by a user.

12. (Original) The machine-readable medium of claim 9, wherein the selected at least one future program is indicated by highlighting.

13. (Original) The machine-readable medium of claim 9, wherein the future program actions menu is displayed in a popup window on the monitor display screen.

14. (Original) The machine-readable medium of claim 9, wherein the selected at least one future program action includes actions selected from the group consisting of recording the selected at least one future program, notifying the user of the display schedule of the selected at least one future program, and preventing the display of the selected at least one future program.

15. (Original) The machine-readable medium of claims 14, wherein the start and/or stop times of the selected at least one future program action does not match the start and/or stop times of the selected at least one future program.

16. (Original) The machine-readable medium of claim 9, wherein the future program actions menu includes a source option such the selected future program action will affect all future programs from a user-specified source.

17. (previously presented) A system for indicating future program action comprising:

an input to receive user input; and

a display to display programs and a processor coupled to the input and the display, the processor configured to (i) provide future program information for a plurality of future programs, at least one future program being selected by a user, (ii) provide, on a future program actions menu including a plurality of future program actions where each future action being a specific action to be performed on a selected future program, (iii) allowing the user to accept or modify the action, (iv) receive the selected future program and a corresponding future program action selected by the user, and (v) display the future program information of the selected future program with an indicator to identify the selected future program action to be performed on the selected future program.

18. (Original) The system of claim 17, wherein the indicator is an action-descriptive icon.

19. (Previously Presented) The system of claim 17, wherein the future program actions menu comprises features selected from the group consisting of a return feature, allowing the user to navigate back to preference menu, and a help feature, allowing the user to navigate to several dependent help categories, the features being able to be selected by the user.

20. (Previously Presented) The system of claim 17, wherein the selected at least one future program action includes actions selected from the group consisting of recording the selected future program, notifying the user of the display schedule of the selected future program, and preventing the display of the selected future program.

21. (Previously Presented) The system of claim 20, wherein the start and/or stop times of the selected future program action does not match the start and/or stop times of the selected future program.

22. (previously presented) The system of claim 17, wherein the future program actions menu includes a source option so that the selected future program action affects all future programs from a user-specified source.

23. (previously presented) A display for indicating future program action comprising:

a first image to provide future program information for a plurality of future programs, at least one future program selected by the user;

a second image comprising a future program actions menu including a plurality of future program actions for the selected at least one future program, each future program action being an action selected to be performed on one of the plurality of future programs;

a third image comprising information on the selected action to allow the user to accept or modify the action; and

at least one fourth image comprising the future program information having a future program action indicated.

24. (Original) The display of claim 23, wherein the indicator is an action-descriptive icon.

25. (Original) The display of claim 23, wherein the future program actions menu comprises features selected from the group consisting of a return feature, allowing user to navigate back to preference menu, and a help feature, allowing user to navigate to several dependent help categories, the features being able to be selected by a user.

26. (previously presented) The display of claim 23, wherein the selected at least one future program action includes actions selected from the group consisting of recording the selected future program, notifying the user of the display schedule of the selected future program, and preventing the display of the selected future program.

27. (Original) The display of claims 26, wherein the start and/or stop times of the selected at least one future program action does not match the start and/or stop times of the selected at least one future program.

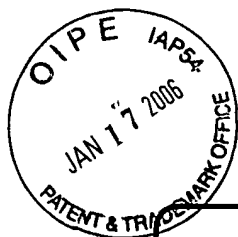
28. (previously presented) The display of claim 23, wherein the future program actions menu includes a source option so that the selected future program action affects all future programs from a user-specified source.

XI. EVIDENCE APPENDIX

None

XII. RELATED PROCEEDINGS APPENDIX

None



AFW
AFA

TRANSMITTAL FORM (to be used for all correspondence after initial filing)	Application No.	09/812,417	
	Filing Date	March 19, 2001	
	First Named Inventor	Tara Burnhouse	
	Art Unit	2173	
	Examiner Name	Cao H. Nguyen	
Total Number of Pages in This Submission	18	Attorney Docket Number	80398P349

ENCLOSURES (check all that apply)		
<input checked="" type="checkbox"/> Fee Transmittal Form <input checked="" type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment / Response <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> PTO/SB/08 <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Response to Missing Parts/ Incomplete Application <input type="checkbox"/> Basic Filing Fee <input type="checkbox"/> Declaration/POA <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) <input type="checkbox"/> Landscape Table on CD	<input type="checkbox"/> After Allowance Communication to TC <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input checked="" type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input type="checkbox"/> Other Enclosure(s) (please identify below): <div style="border: 1px solid black; height: 80px; width: 100%;"></div>
Remarks		

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT	
Firm or Individual name	Thinh V. Nguyen, Reg. No. 42,034 BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP
Signature	
Date	January 11, 2006

CERTIFICATE OF MAILING/TRANSMISSION			
I hereby certify that this correspondence is being deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Mail Stop Appeal Brief-Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.			
Typed or printed name	Tu T. Nguyen		
Signature		Date	January 11, 2006



FEE TRANSMITTAL for FY 2005

Patent fees are subject to annual revision.

☐ Applicant claims small entity status. See 37 CFR 1.27.

TOTAL AMOUNT OF PAYMENT (\$) 500.00

Complete if Known

Application Number	09/812,417
Filing Date	March 19, 2001
First Named Inventor	Tara Burnhouse
Examiner Name	Cao H. Nguyen
Art Unit	2173
Attorney Docket No.	80398p349

METHOD OF PAYMENT (check all that apply)

☒ Check ☐ Credit card ☐ Money Order ☐ None ☐ Other (please identify): _____

☒ Deposit Account Deposit Account Number: 02-2666 Deposit Account Name: Blakely, Sokoloff, Taylor & Zafman LLP

For the above-identified deposit account, the Director is hereby authorized to: (check all that apply)

☐ Charge fee(s) indicated below ☐ Charge fee(s) indicated below, except for the filing fee
☒ Charge any additional fee(s) or underpayment of fee(s) ☒ Credit any overpayments
under 37 CFR §§ 1.16, 1.17, 1.18 and 1.20.

FEE CALCULATION

Large Entity		Small Entity		Fee Description	Fee Paid
Fee Code	Fee (\$)	Fee Code	Fee (\$)		
1051	130	2051	65	Surcharge - late filing fee or oath	
1052	50	2052	25	Surcharge - late provisional filing fee or cover sheet.	
2053	130	2053	130	Non-English specification	
1251	120	2251	60	Extension for reply within first month	
1252	450	2252	225	Extension for reply within second month	
1253	1,020	2253	510	Extension for reply within third month	
1254	1,590	2254	795	Extension for reply within fourth month	
1255	2,160	2255	1,080	Extension for reply within fifth month	
1401	500	2401	250	Notice of Appeal	
1402	500	2402	250	Filing a brief in support of an appeal	500.00
1403	1,000	2403	500	Request for oral hearing	
1451	1,510	2451	1,510	Petition to institute a public use proceeding	
1460	130	2460	130	Petitions to the Commissioner	
1807	50	1807	50	Processing fee under 37 CFR 1.17(q)	
1806	180	1806	180	Submission of Information Disclosure Stmt	
1809	790	1809	395	Filing a submission after final rejection (37 CFR § 1.129(a))	
1810	790	2810	395	For each additional invention to be examined (37 CFR § 1.129(b))	
Other fee (specify) _____					
SUBTOTAL (2)					(500.00)

SUBMITTED BY

Complete (if applicable)

Name (Print/Type)	Thinh V. Nguyen	Registration No. (Attorney/Agent)	42,034	Telephone	(714) 557-3800
Signature		Date	01/11/06		